



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE **APR 01 2013**

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO). The Form I-290B, Notice of Appeal or Motion, will be rejected.

The petitioner submitted a Form I-129, Petition for Nonimmigrant Worker, to the California Service Center on June 4, 2012. On the Form I-129 visa petition, the petitioner describes itself as an enterprise engaged in physical, occupational, and speech therapy services that was established in 2006. In order to employ the beneficiary in what it designates as a rehab coordinator position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. Counsel for the petitioner submitted the Form I-290B, Notice of Appeal or Motion, on October 10, 2012. Thereafter, the director returned the Form I-290B to counsel along with a rejection notice.

Counsel responded to the rejection notice by resubmitting the Form I-290B and supporting documents. Counsel stated that the "Form I-290B and its attached documents are being returned to you in the exact same condition as you sent back to us." Counsel asserted that the rejection was in error "because Part 2 was filled out."

The AAO reviewed the Form I-290B and observes that counsel marked Box A and Box E of Part 2 of the Form I-290B, thereby indicating that the petitioner and counsel were attempting to file an appeal and a motion to reconsider the decision.

The regulations clearly require that every application, petition, appeal or motion be filed in accordance with the instructions on the form. *See* 8 C.F.R. § 103.2(a)(1); 8 C.F.R. § 103.2(b)(1). On the Form I-290B at Part 2, the form states "Check **one box** below that best describes your request (emphasis added)." In addition, the instructions to Form I-290B state: "You must clearly indicate if you are filing **an appeal or a motion** (emphasis added)." By failing to adhere to the instructions to the form by checking more than one box, the petitioner and counsel submitted an improperly filed request. As counsel marked Box A for an appeal and Box E for a motion to reconsider, it cannot be determined that the AAO has jurisdiction over this matter. By failing to adhere to the instructions to the form by checking more than one box, the petitioner and counsel submitted an improperly filed request.¹

¹ In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party or the attorney or representative of record must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i). It is noted that the service center director properly gave notice to the petitioner of the

As the Form I-290B was improperly filed, the request must be rejected.

ORDER: The Form I-290B, Notice of Appeal or Motion, is rejected.

timeframe to file the appeal. Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO authority to extend this time limit. A benefit request which is rejected will not retain a filing date. See 8 C.F.R. § 103.2(a)(7)(iii). There is no appeal from such rejection. *Id.*

In the instant case, the record indicates that the service center director issued the decision on September 7, 2012. Counsel for the petitioner submitted the Form I-290B on October 10, 2012 (33 days after the decision was issued). However the submission was rejected. Thereafter, counsel resubmitted the Form I-290B. As discussed above, the Form I-290B was improperly filed as counsel marked Box A and Box E of Part 2 of the form. However, the AAO observes that even if the resubmission had been properly filed, the Form I-290B was not received by the service center until November 2, 2012, or 56 days after the director's decision to deny the petition was issued. Accordingly, the AAO cannot consider the Form I-290B as timely filed. Thus, in the alternative, the AAO rejects the Form I-290B as untimely filed.